

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

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| EDDIE YAKLIN FORD LINCOLN MERCURY NISSAN, INC. | § | |
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| Plaintiff, | § | |
| v. | § | |
| | § | CIVIL ACTION NO. 2:15-CV-399 |
| AMERICAN ROAD INSURANCE COMPANY, AMERICAN ROAD SERVICES COMPANY, and UNIVERAL UNDERWRITERS INSURANCE COMPANY, | § | |
| | § | |
| | § | |
| | § | |
| Defendants. | § | |
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**DEFENDANTS AMERICAN ROAD INSURANCE COMPANY AND AMERICAN ROAD
SERVICES COMPANY'S NOTICE OF REMOVAL**

Defendants American Road Insurance Company and American Road Services Company (collectively “American Road”) file this notice of Removal under 28 U.S.C. § 1446(a). Defendant Universal Underwriters Insurance Company (“Universal Underwriters”) consents to removal pursuant to 28 U.S.C. § 1446(b)(2)(A).

Background

1. On July 30, 2015, Plaintiff Eddie Yaklin Ford Lincoln Mercury Nissan, Inc. (“Yaklin Ford”) filed its Original Petition and Request for Disclosure in the 105th District Court of Kleberg County, Texas, styled, *Eddie Yaklin Ford Lincoln Mercury Nissan, Inc. v. American Road Insurance Company, American Road Services Company, and Universal Underwriters Insurance Company*, Cause No. 15-382-D. A true and correct copy of Yaklin Ford’s Original Petition and Request for Disclosure is included in Exhibit B, which is attached hereto and incorporated by reference herein for all purposes.

2. American Road was served on August 17, 2015 and files this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b)(1); *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

3. Pursuant to Local Rule 81, the following items have been attached:

- a. A copy of the executed process (Exhibit A);
- b. A copy of Yaklin Ford's Original Petition and Defendants' answers to that pleading (Exhibit B);
- c. All orders signed by the state judge (Not Applicable – No Orders);
- d. A copy of the state court docket sheet (Exhibit C);
- e. An index of matters being filed (Exhibit D); and
- f. A list of all counsel of record, including addresses, telephone numbers and parties represented (Exhibit E).

4. The following documents have also been filed with the Notice of Removal pursuant to Federal Rule of Civil Procedure 7.1(b)(1) and Local Rule 3:

- a. Civil cover sheet; and
- b. Certificate of interested persons.

Basis for Removal

5. Removal is proper because there is complete diversity between the parties and the amount in controversy exceeds \$75,000. 28 U.S.C. §1332(a); *Garcia v. Koch Oil Co. of Tex. Inc.*, 351 F.3d 636, 638 (5th Cir. 2003).

6. Yaklin Ford is a Texas company with its principal place of business in Kleberg County, Texas. See 28 U.S.C. § 1332(c)(1).

7. American Road Insurance Company is a Michigan corporation, and its principal place of business is in Dearborn, Michigan. See 28 U.S.C. § 1332(c)(1).

8. American Road Services Company is a Delaware corporation, and its principal place of business in Dearborn, Michigan *See* 28 U.S.C. § 1332(c)(1).

9. Universal Underwriters is an Illinois corporation, and its principal place of business is in Schaumburg, Illinois. *See* 28 U.S.C. § 1332(c)(1).

10. Universal Underwriters consents to the present removal, and its notice of consent to removal is attached as Exhibit F.

11. Yaklin Ford sued American Road under the Texas Insurance Code and the Texas Business and Commerce Code for denying an insurance claim related to the theft of a vehicle. *See* Exhibit B. The amount of the denied claim is \$67,025.00. *See* Exhibit G; *see also* 28 U.S.C. 1446(c)(2); *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1255 (5th Cir. 1998) (“[W]hen a complaint does not allege a specific amount of damages, . . . the court may rely on ‘summary-judgment-type’ evidence to ascertain the amount in controversy.”). Because Yaklin Ford seeks treble damages under the Texas Deceptive Trade Practices Act (DTPA) and the Texas Insurance Code, 18% per annum damages under the Texas Insurance Code, exemplary damages, and statutory attorney’s fees, *see* Exhibit B, the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* *Greenberg*, 134 F.3d at 1255 (including statutory damages and statutory penalties in the amount-in-controversy calculus); *Lewis v. State Farm Lloyds*, 205 F. Supp. 2d 706, 708 (S.D. Tex. 2002) (including requested treble damages under DTPA and Texas Insurance Code, exemplary damages, and attorney’s fees in concluding that the amount in controversy exceeded \$75,000.00); *see also* *Bates v. Laminack*, 938 F. Supp. 2d 649, 655 (S.D. Tex. 2013) (“There is no question that punitive or exemplary damages are included in calculating the amount in controversy. . . . Likewise, statutory attorney’s fees (available under the DTPA and for a breach of contract action) are included in the calculation of the amount.”).

12. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the action has been pending is located in this district.

13. American Road will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

Conclusion

As there is a complete diversity between the parties and the amount in controversy exceeds \$75,000, American Road respectfully requests that this case be removed to federal court.

Respectfully submitted,
ANGLEY, LLP

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**COUNSEL FOR AMERICAN ROAD INSURANCE
COMPANY AND AMERICAN ROAD SERVICES
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served in accordance with the Federal Rules of Civil Procedure to the following via first class mail, facsimile, and/or electronic mail on the 15th day of September, 2015.

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